

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

*KYLE HARVEY, Natural and Biological
Father of A.H., a Minor, Deceased,*

Plaintiff,

v.

GREAT CIRCLE, et al.

Defendants.

Cause No. 4:19-cv-00902

JURY TRIAL DEMANDED

**DEFENDANT GREAT CIRCLE'S MOTION TO DISMISS PLAINTIFF'S LAWSUIT
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

COMES NOW Defendant Great Circle¹ and, pursuant to Federal Rule 12(b)(6), hereby moves for dismissal of Plaintiff's lawsuit for failure to state a claim upon which relief can be granted:

1. Plaintiff Kyle Harvey, allegedly the natural and biological father of A.H., a deceased minor, commenced a lawsuit against Great Circle by filing another² lawsuit (*see*, Harvey's New Petition attached to the notice of removal in the state court file) alleging claims for wrongful death under state law, and in pertinent part violations of federal law under 42 U.S.C. §§ 1983 and 1985.

2. Plaintiff's Complaint fails to state a claim upon which relief can be granted for three independent reasons: (1) qualified immunity pursuant to Missouri Statute §210.114; (2)

¹ Codefendant Kelly Ann Connelly has not yet been served but the reasons entitling Great Circle to dismissal are equally applicable to the individually named defendant.

² Kyle Harvey previously filed substantially the same lawsuit in the U.S. District Court, Eastern District of Missouri, *see* Case No. 4:17-cv-01021-NAB, which was dismissed on June 16, 2017 [see Doc. 12 in Case No. 4:17-cv-01021-NAB].

Section 210.135's immunity also applies and bars Plaintiff's lawsuit against Great Circle; and (3) there is no proximate causation between Great Circle's alleged negligence and decedent's death.

3. Defendant Great Circle's memorandum in support filed contemporaneously and incorporated by reference herein sets forth the relevant arguments and citations to legal authorities relied upon.

WHEREFORE, Great Circle respectfully requests the Court dismiss Plaintiff's Complaint in its entirety for failure to state claims upon which relief may be granted.

SANDBERG PHOENIX & von GONTARD P.C.

By: /s/ Casey F. Wong

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Certificate of Service

I hereby certify that on the 9th day of April 2019 the foregoing was filed electronically with the Clerk of the Court and served via electronic mail upon the following:

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